MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7943 OF 2006

SIDRAM KASHINATH KAMBLE .. PETITIONER

Vs.

THE STATE OF MAHARASHTRA & ORS... RESPONDENTS

Mr. A. R. Pitale for petitioner
Ms. S. S. Bhende, AGP for R-1
Mr. B. D. Joshi for R-4 & 5

CORAM: SMT. RANJANA DESAI &
SMT. R. S. DALVI,JJ.

DATE: NOVEMBER 23, 2007.

P.C.

. We have heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has prayed that a writ of mandamus be issued to absorb the petitioner in service of the respondent Council in the quake affected category within a time frame laid down by this court.

3. On 17th March 2006 in an earlier petition filed by the petitioner, this court directed the respondents to place the proposal of the petitioner

before the General Body for appropriate orders and take decision thereon. We are informed that accordingly the procedure was followed and the proposal of the petitioner was rejected by the General Body. The petitioner has, therefore, filed the present petition.

4. The learned counsel for the petitioner has strenuously contended that the petitioner's case is completely covered by the rehabilitation scheme and he should have been given employment. He drew our attention to the petitioner's affidavit in rejoinder and submitted that the persons mentioned in annexure to the said affidavit have been absorbed by the 4th respondent and, therefore, the 4th respondent's case that the petitioner could not have been employed is falsified.

5. We have been taken through the affidavit of Shri Nandkishor Dattatray Burade, Assistant Director in the office of the Directorate of Municipal Administration, Mumbai. The affidavit says that by the Govt. Resolution dated 10/9/01 issued by the Finance Department of the State Government, it was directed that all the Government Departments should review the staffing pattern in

all the establishments in the State. On the basis of the said Govt. Resolution, the Directorate of Municipal Administration, vide Standing Order dated 19th October, 2004, directed all the Municipal Councils to submit their staffing pattern in order to assess the necessary and surplus posts in their establishments and further not to give any new appointments unless and until the staffing pattern is sanctioned.

6. The affidavit further goes on to say that in the letter dated 30/8/05, Ambernath Municipal Council submitted its proposal to the office of Directorate as regards staffing pattern. After scrutinizing all the papers and record, vide order dated 20/9/05, it was approved on the conditions stated therein. It is further stated that after scrutinising the proposal of staffing pattern submitted by Ambernath Municipal Council, it was noticed that only 374 posts are required to run the said Municipal Council efficiently and effectively and that there are 826 surplus posts existing in the said establishment. It is further stated that because of condition No. 1 of the order dated 20/9/05, the Municipal Council can fill up the permanent posts only if there exists a clear

vacancy in the posts and they cannot appoint any persons on non-permanent posts. A person can be appointed in the Municipal Council after following the reservation policy and the procedure laid down by the Government from time to time and only if there exists a clear vacant permanent post.

7. We have also been taken through the affidavit of Sudhir Sridhar Raut, Chief Officer of 4th respondent Ambarnath Municipal Council. We may quote the relevant portions of the said affidavit:

> . "I say and submit that as per Government Order dated 15/7/1971 maximum expenditure on establishment of the Respondent Council was permissible upto the maximum of 42% of the total income of the Council. Thereafter, the Government by its order dated 28/9/2000 due to the payment of 5th Pay Commission wages & regularization of daily wages employees had permitted maximum of 50% expenditure on the establishment of A - Class municipal council, including the respondent No. 4 Council. Thereafter during the period of 2004 - 2005 the expenditure on establishment of the

> Respondent Council rose upto 54% and in the year 2005-2006, the expenditure rose further to 63% and as the same were beyond the permitted level, the proposal of the petitioner was turned down."

8. Mr. Joshi, learned counsel appearing for the 4th respondent contended that inasmuch as the Government has declined to bear expenditure beyond permitted level, the petitioner's prayer could not have been considered by the 4th respondent. He submitted that the persons mentioned in the list annexed to affidavit-in-rejoinder of the petitioner have been taken in service by the 4th respondent on compassionate grounds as Safai Kamgars and as per the Government Resolution dated 11/8/06 expenditure incurred on account of payment made to persons employed on compassionate grounds is not to be considered while calculating administrative expenses and even if such expenditure exceeds 50% that will be tolerated. A copy of the said resolution is shown to us. Mr. Joshi also pointed out that the post covered by the requisition is a non-permanent post and, therefore, no right can be claimed as regards this post. Mr. Joshi also relied on the judgment of the Supreme Court in

State of Karnataka & Ors. v. Umadevi & Ors., (2006) 4 SCC 1.

9. The affidavit of the 4th respondent indicates that as per the High Court's order dated 17/3/06 proposal of the petitioner was placed before the General Body and the General Body by its Resolution dated 28/4/06 rejected the proposal. It appears from the annexures to the petition that the requisition was for the post of mason (Gavandi). Letter dated 23/10/06 addressed by the petitioner to the State of Maharashtra confirms this fact. This is also the contention of Mr. Joshi, learned counsel for the 4th respondent. As per the minutes of the 4th respondent dated 28/4/06, according to Government Order dated 20/9/05 approving the staffing pattern of the 4th respondent, the said post is a non-permanent post. The said Government order is before us. There is a reference to this order in the affidavit filed by the State. It is stated in the said affidavit that as per the staffing pattern of the 4th respondent, a person can be appointed in the 4th respondent Council only if there exists a clear vacant post. Therefore, the petitioner cannot claim a right to be appointed to the said non-permanent post. In view of the

explanation given in the affidavit filed on behalf of the 4th respondent, the case of the petitioner cannot be equated with the case of persons whose appointments have been made on compassionate grounds. Having perused the affidavits filed by the respondents, in our opinion, relief prayed for by the petitioner cannot be granted.

10. Learned counsel for the petitioner states that the petitioner is desirous of making a representation to the State Government. If such a representation is made, the State Government may consider it in accordance with law and if the petitioner can be absorbed in any other department this order will not come in the way of the State Government.

11. Petition is disposed of.

JUDGE

JUDGE